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JAMES H. McKENNEY,
Clerk.

No. 378.

Br. of Knowlton & Cook for Appellee (on mo. to adv.)

Filed Oct. 14, 1901.

Supreme Court of the United States.

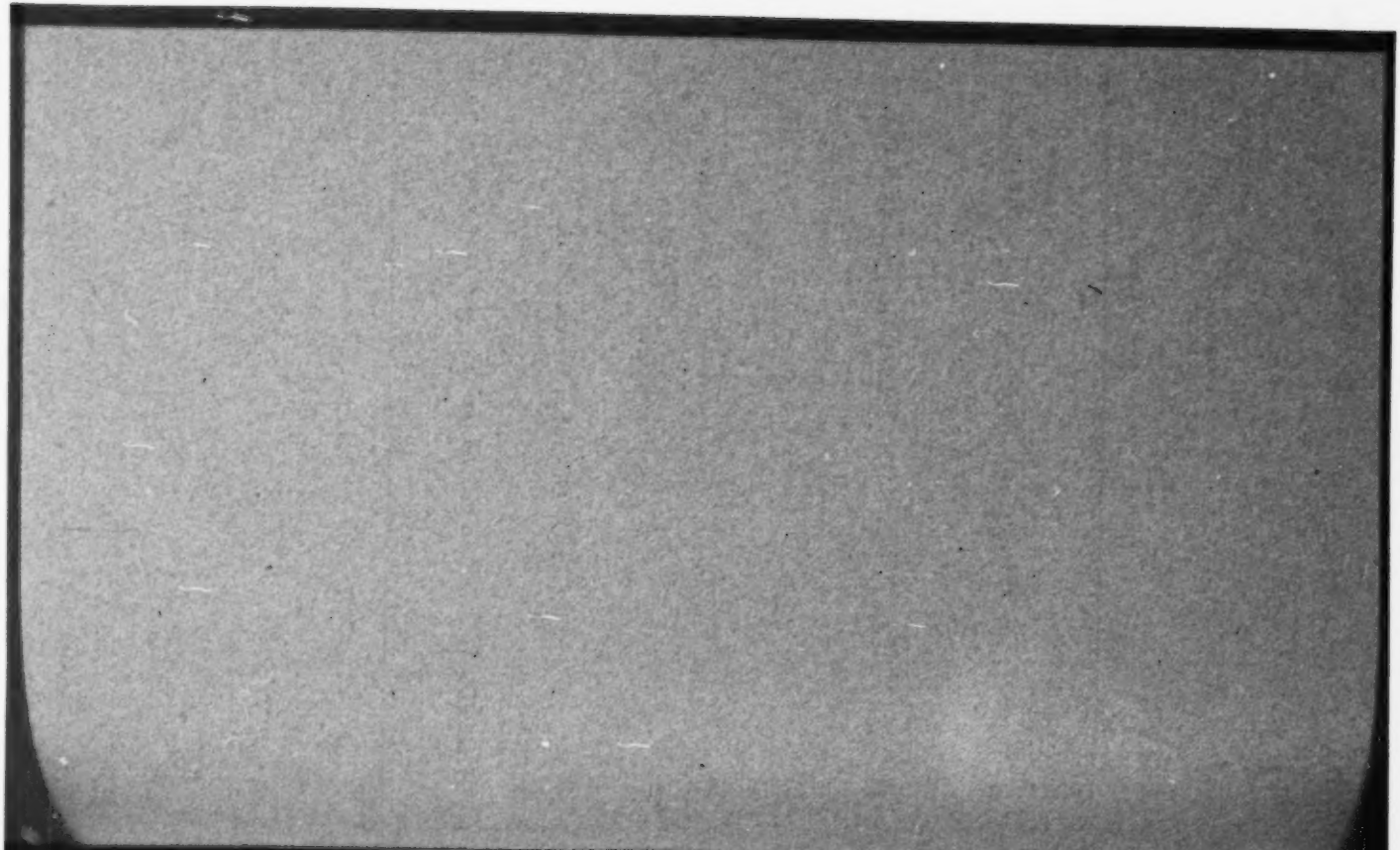
LUIGI STORTI, Petitioner for Writ of Habeas Corpus, Appellant,

v.

BENJAMIN F. BRIDGES, Warden of the Massachusetts State Prison, Appellee.

No. 378. October Term, 1901.

MOTION OF APPELLEE TO ADVANCE.



Supreme Court of the United States.

No. 378. October Term, 1901.

Luigi Storti, Petitioner for Writ of Habeas Corpus, Appellant,

v.

Benjamin F. Bridges, Warden of the Massachusetts State Prison, Appellee.

ON APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

Motion to Advance.

Benjamin F. Bridges, Warden of the Massachusetts State Prison, Appellee, moves that this cause be advanced upon the docket of the court, to be heard and argued on October 28, 1901, in the place of the case of Storti, Petitioner for writ of Habeas Corpus, Appellant, *v.* Massachusetts, *et al.*, No. 325, assigned for hearing on October 28, 1901.

Statement of the Case.

The petitioner was sentenced on Jan. 4, 1901, to suffer the punishment of death by the passage of a current of electricity through his body, within the week beginning on Sunday, the seventh day of April, 1901, in accordance with the provisions of the Massachusetts

Statutes of 1898, chapter 326. On April 9, 1901, the Governor of the Commonwealth of Massachusetts respited his sentence, the term of the respite to expire on Saturday, the eleventh day of May, 1901. On May 10, 1901, the petitioner filed a petition for a writ of habeas corpus in the Circuit Court of the United States for the district of Massachusetts, and on May 11, 1901, a hearing was had and an order was entered denying the petition. The petitioner thereupon appealed to this court, and that appeal is now pending as Storti v. Massachusetts, No. 325, October Term, 1901, and on May 27, 1901, it was assigned for argument on Oct. 28, 1901. Before the appeal in said case No. 325 was entered in this court, to wit, on May 15, 1901, the Governor of Massachusetts again respited the sentence of the petitioner, the term of the respite to expire on May 25, 1901; and again, after motions to suspend paragraph 4 of Rule VI. of this court, and to dismiss the appeal in said case No. 325 had been denied, to wit, on May 29, the Governor of Massachusetts respited the petitioner's sentence, the term of respite to expire on Nov. 9, 1901. During the term of the petitioner's second respite and after the appeal in said case No. 325 had been entered in this court, to wit, on May 23, 1901, the petitioner brought this second petition for a writ of habeas corpus in the Circuit Court of the United States for the District of Massachusetts, and his petition was denied on the ground of the want of jurisdiction of the Circuit Court, and the circuit judges who heard the case have so certified to this court.

In re Storti, 109 Fed. Rep. 807.

An appeal to this court was allowed by Mr. Justice Gray on June 21, 1901. The principal allegation in the petition is that "there has been no further *lawful* pardon, commutation or respite of sentence by the Governor" since the expiration of the first respite on May 11, 1901. There are general allegations in the petition that the petitioner is deprived of his liberty without due process of law, and denied the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, and that he may be deprived of certain rights guaranteed by the treaty with Italy, but they are not supported by any allegations of fact.

REASONS FOR THIS MOTION.

The appellant and the appellees have entered into an agreement, which has been filed in this court, that the case of Storti, Petitioner, *v.* Massachusetts, No. 325, October Term, 1901, may be dismissed when reached for argument, on October 28, 1901. There is no federal question presented by the petitioner in this case, and the due course of justice in Massachusetts requires that this case should be advanced and disposed of.

HOSEA M. KNOWLTON,
Attorney-General of Massachusetts.

ARTHUR W. DEGOOSH,
Assistant Attorney-General.

The appellant assents to the allowance of the above motion.

By his attorneys,